

E Rate Solutions Group



October 24, 2009

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300
East Hampton Drive
Capitol Heights, MD 20743

REQUEST FOR WAIVER

CC Docket No. 02-6

Applicant Name: Lenox Hill Neighborhood House, Inc.
BEN's: 16050593
USAC 471 Application Numbers: 702663
Funding Year 2009, Form 471 Postmarked " Outside of Window"
Applicants USAC Form Identifier: LenoxHill

Dear Ms. Dortch:

Lenox Hill Neighborhood House, Inc., through E Rate Solutions Group, its agent providing services for Universal Service Administration Company's ("USAC") filings, respectfully submits this waiver request of the Universal Service Administration Company's policy for Form 471 "out-of-window" filings.

The pertinent facts supporting this waiver request are as follows:

1. Lenox Hill Neighborhood House, Inc. ("Lenox") does not have in-house personnel knowledgeable in USAC filings.
2. Lenox hired E Rate Solutions Group ("ESG"), a small consulting company run by Joseph Weiss, as its agent for filing USAC filings on its behalf, including Form 471.
3. ESG prepared the Form 471 on-line, in-window, and scheduled Joseph Weiss to review and submit the Form 471 application in-window; Joseph Weiss is the only one at ESG who reviews, submits and certifies Form 471 applications.
4. On Saturday February 7, 2009, Joseph Weiss had an unforeseen, unavoidable personal medical emergency requiring his admittance into Bayshore Community Hospital. He was diagnosed with severe pneumonia and was transferred to the Intensive Care Unit at Robert Wood Johnson

Toll-Free: 888.429.4932 · Phone: 732.946.8300 · Fax: 888.429.5749

The Power of Knowledge

E Rate Solutions Group



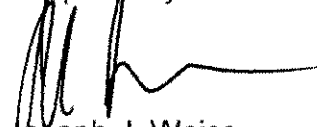
University Hospital where he underwent surgery to insert tubes into his chest, requiring him to remain hospitalized until February 22, 2009, all the while being unable to work, including not reviewing and submitting Form 471 applications in-window (See Exhibit A - Letter from Dr. Brooks).

5. Neither others at ESG or Lenox recognized the oversight of the 471 by the end of the in-window period.
6. ESG certified the completed form and received an out-of-window denial August 27, 2009 that would need to be appealed.
7. ESG, on behalf of Lenox, is filing this out-of-window waiver with the Federal Communications Commission in accordance with the appeals procedure.

ESG understands that in the *Bishop Perry Order* and the *Academy for Academic Excellence Order*, the Commission and the Bureau, respectively, granted waivers to applicants who missed the FCC Form 471 filing window deadline due to circumstances beyond their control, including inclement weather, technical malfunctions, school reorganizations, misunderstandings/confusion, personal emergencies, or inadvertent errors¹. ESG, on behalf of Lenox, believes that these orders apply in this case. The oversight at issue is procedural, not substantive, resulting from a personal medical emergency of Joseph Weiss, the individual solely responsible for completing the Form 471 application; ESG, on behalf of Lenox, believes that rejection of the 471 filing is not warranted. There is no evidence of waste, fraud, or abuse, or misuse of funds in this case.

Lenox now stands to lose in excess of \$209,023.20 in discounted telecommunications services. At a time when school districts nationwide are having budget problems, potentially denying Lenox's application simply because of the personal medical emergency described above that prevented the timely USAC communication, would severely penalize Lenox due to the sickness of its agent and is inconsistent with the intent of the E-Rate program for schools and libraries. The school should not be penalized due to the sickness of their consultant.

Respectfully submitted,



Joseph J. Weiss
Director

¹ *Bishop Perry Order*, 21 FCC Rcd at 5321-22, para. 12; *Academy of Academic Excellence Order*, 22 FCC Rcd at 4748-49, para. 5

Exhibit A

KENNETH L. BROOKS, M.D., P.C.
P.O. BOX 11
MEDINA, NEW YORK 14103
585-798-1807

March 2, 2009

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Dear Ms. Dortch:

Joseph Weiss was admitted to Bayshore Community Hospital at approximately 4:00am on Saturday February 7, 2009 because of fever and difficulty breathing. He was then transferred to the Intensive Care Unit at Robert Wood Johnson University Hospital in New Brunswick, New Jersey at approximately 6:00 pm on Saturday February 7, 2009 because he needed more sophisticated care. Clinical, laboratory and CT Scanning revealed that he had extensive consolidated right upper and lower lobe pneumonias with two loculated empyemas. He was treated with insertion of two chest tubes for drainage of the pus filled empyemas which had to be repeated two times. In addition, he required extensive intravenous antibiotics, respiratory and physical therapy.

Joseph Weiss remained in the hospital until Sunday February 22, 2009. During his hospitalization he was septic and hypoxic and unable to conduct any work. He is still recovering and is not yet able to return to his normal job and routine.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kenneth L. Brooks', is written over the word 'Sincerely,'.

Kenneth L. Brooks, M.D.